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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 ELECTRONIC EVIDENCE  
10 DISCOVERY, INC.,

11 Plaintiff,

12 v.

13 REGINA CHEPALIS,

14 Defendant.

Case No. C07-1929RSL

ORDER DENYING MOTION FOR  
A TEMPORARY RESTRAINING  
ORDER

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16 **I. INTRODUCTION**

17 This matter comes before the Court on a motion for a temporary restraining order  
18 (Dkt. #3) filed by plaintiff Electronic Evidence Discovery, Inc. ("EED") to restrain its  
19 former employee, Regina Chepalis, from disclosing its trade secrets and from working for  
20 what EED alleges is a competitor in violation of her employment agreement with EED.  
21 Chepalis responded to the motion on December 11, 2007. For the reasons set forth  
22 below, the Court denies the motion.

23 **II. DISCUSSION**

24 **A. Background Facts.**

1 EED provides services and software products related to the fields of civil,  
2 criminal, and regulatory discovery, corporate investigations, regulatory compliance, data  
3 management, and document management. It has clients located across the country and in  
4 Europe.

5 Chepalis began working for EED in 2005 as VP of Regional Operations. As a  
6 condition of her employment, EED required her to sign an employment agreement, which  
7 she did ('the "agreement"). In the agreement, Chepalis agreed (1) to maintain EED's  
8 confidential and proprietary information; (2) not to solicit or encourage directly or  
9 indirectly employees or customers from terminating their relationship with EED for one  
10 year after her employment ended; and (3) not to compete directly or indirectly with EED  
11 for one year after her employment ended. Chepalis was promoted to Chief Operations  
12 Officer in 2006. As COO, she was one of the company's three highest ranking  
13 employees. She was responsible for overseeing EED's operations on a company-wide  
14 basis, including formulation of strategic plans, product plans, sales plans, and operating  
15 plans. Her duties also required her to become familiar with substantial confidential and  
16 proprietary information and trade secrets regarding EED's strengths, weaknesses, and  
17 operational and acquisition plans and strategies.

18 On October 22, 2007, Chepalis notified EED's CEO that she had accepted an offer  
19 of employment with Poorman-Douglas in Portland, Oregon. On or around November 13,  
20 2007, EED learned that Poorman-Douglas had been acquired almost four years ago by  
21 Epiq Systems. Chepalis currently works for Epiq Class Action and Claims Solutions, Inc.  
22 ("Epiq Class Action"), a wholly owned subsidiary of Epiq Systems. EED asserts that  
23 Chepalis misrepresented her employment plans.

24 Chepalis now works for Epiq Class Action as "general manager." She is  
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1 responsible for its operations in support of its class action services provided to law firms  
2 and government agencies.

3 **B. Analysis.**

4 A party is entitled to injunctive relief when it demonstrates (1) the combination of  
5 probable success on the merits and the possibility of irreparable injury, or (2) the  
6 existence of serious questions regarding the merits and the balance of hardships tips  
7 sharply in its favor. See Fund for Animals, Inc. v. Lujan, 962 F.2d 1391, 1400 (9th Cir.  
8 1992). Each of these tests “requires an examination of both the potential merits of the  
9 asserted claims and the harm or hardships faced by the parties.” Sammartano v. First  
10 Judicial Dist. Court, in and for County of Carson City, 303 F.3d 959, 965 (9th Cir. 2002).  
11 These are not separate tests, but rather represent a continuum of equitable discretion “in  
12 which the required probability of success on the merits decreases as the degree of harm  
13 increases.” Westlands Water Dist. v. Natural Res. Def. Council, 43 F.3d 457, 459 (9th  
14 Cir. 1994).

15 Restrictive employment covenants are disfavored in Washington. See, e.g.,  
16 Organon, Inc. v. Hepler, 23 Wn. App. 432, 436 n.7 (1979). A court will enforce a  
17 restrictive covenant only “to the extent that such restriction is reasonable and necessary to  
18 protect a legitimate business interest of the employer.” Wood v. May, 73 Wn.2d 307,  
19 312 (1968).

20 EED argues that the scope of the restrictive covenant in the agreement is  
21 reasonable. Even if it is, EED must show a probability that it will succeed on the merits  
22 of its claim that Chepalis has breached or is about to breach the agreement. The mere  
23 fact that Chepalis has protectable information does not mean that she will use that  
24 information in a way that violates the agreement. EED has not provided any evidence  
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1 that Chepalis has or will (1) divulge its proprietary information and/or trade secrets, (2)  
2 solicit its clients, or (3) solicit its employees. Chepalis denies that she has solicited any  
3 client of EED, used any of EED's confidential information during her new employment,  
4 or hired or tried to hire any EED employees. Her new job duties do not include  
5 marketing, sales, or recruitment.

6 EED also argues that Epiq Class Action is its direct competitor, but the record  
7 does not support that assertion. None of the declarations EED filed states that those two  
8 entities are competitors or that EED provides class action services. In fact, EED's CEO  
9 had never heard of Poorman-Douglas until Chepalis told him she intended to work for  
10 that company. Specifically, EED is involved in "supporting corporations and their  
11 outside law firms' eDiscovery activities." Declaration of Kenneth Sokol, (Dkt. #8) at  
12 ¶ 13. The agreement prohibits Chepalis from working for any entity that provides  
13 "electronic discovery and/or document management services for the purpose of litigation"  
14 or "that produces or provides software for management of information for litigation."  
15 Agreement at ¶ 7(b). In contrast, Epiq Class Action does not provide electronic discovery  
16 or document recovery and management services. It provides class action claimant  
17 outreach, class action notifications, class action claims verification and analysis, and  
18 disbursement of class action payments to class members. Declaration of Regina  
19 Chepalis, (Dkt. #12) at ¶ 7.

20 Rather than showing that Epiq Class Action competes with EED, the record shows  
21 that *Epiq Systems* is a competitor.<sup>1</sup> To overcome that hurdle, EED frequently refers to the  
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23 <sup>1</sup> Because Epiq Systems and Epiq Class Action are separate legal entities and Epiq  
24 Class Action does not compete with EED, the inevitable disclosure doctrine would not  
25 apply in this circumstance even if it was recognized in Washington.

1 operations of both Epiq Systems and Epiq Class Action as if they are a single entity, but  
2 they are separate legal entities. Chepalis only works for Epiq Class Action. She does not  
3 work for or provide any services to Epiq Systems or Epiq eDiscovery Solutions, Inc.,  
4 which is the Epiq Systems subsidiary that provides e-discovery services. EED also  
5 argues that the two businesses are joint employers. EED argues that the two companies  
6 “are highly integrated in their operation and management and freely share information  
7 and strategy on an enterprise-wide basis,” but the documents they provided do not  
8 support that proposition. Motion at p. 6. The fact that the two companies serve some of  
9 the same clients does not show that they are legally the same employer.

10 In addition, the balance of hardships does not tip in EED’s favor. Chepalis is the  
11 sole income provider for her family, which includes a young child. Chepalis also notes  
12 that if the agreement was interpreted in the way EED advocates to preclude her from  
13 working with services that EED does not offer, it would preclude her entirely from  
14 working in the field of litigation support. She has worked in that field for 24 years.  
15 Accordingly, the Court finds that EED is not entitled to a temporary restraining order.

16 The Court therefore considers EED’s request for expedited discovery. EED seeks  
17 an order permitting it to (1) depose Chepalis on or before December 14, 2007; (2) issue  
18 written discovery and require Chepalis to respond within five days of service; and (3)  
19 obtain a Rule 34 inspection of Chepalis’ personal computer hard drives and email  
20 accounts within five days of service of a request for the same. The Rules allow the Court  
21 to order expedited discovery. EED has not made a showing sufficient to justify granting  
22 the sweeping and expedited discovery it seeks. However, it is apparent that Chepalis is  
23 working in the field of litigation support, which is the same field in which EED operates.  
24 EED has also shown that if Chepalis is violating the agreement, it would suffer serious

1 consequences which would be exacerbated by the passage of time. EED is entitled to  
2 learn more about Epiq Class Action and Chepalis' job duties on an expedited basis.  
3 Accordingly, the Court will set an expedited schedule for the parties to confer and  
4 exchange initial disclosures, after which they may commence discovery.

5 **III. CONCLUSION**

6 Plaintiff has failed to carry its burden and the Court therefore DENIES the motion  
7 for a TRO (Dkt. #3). EED may, after conducting discovery, file a motion for a  
8 preliminary injunction.

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10 DATED this 13th day of December, 2007.

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13 Robert S. Lasnik  
14 United States District Judge  
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